

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, DC 20554

RECEIVED  
FEB 15 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments  
FM Broadcast Stations.  
(Gaviota, California)

)  
)  
)  
)  
)  
)  
)

MM Docket No. 99-352  
RM-9786

TO: Chief, Allocations Branch  
Mass Media Bureau

**REPLY COMMENTS OF STRATOSPHERE BROADCASTING LIMITED  
PARTNERSHIP**

Stratosphere Broadcasting Limited Partnership ("Stratosphere"), by its attorneys, respectfully submits these reply comments regarding the proposal of Brian Costello ("Petitioner") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to allot Channel 266A at Gaviota, California.

On October 28, 1999, Petitioner filed a Petition for Rule Making seeking the allotment of Channel 266A at Gaviota, California. On December 10, 1999, the Mass Media Bureau issued a Notice of Proposed Rule Making in which it requested comments on Gaviota's attributes to determine whether it is a community for allotment purposes.

Petitioner and Stratosphere filed timely comments in this proceeding. Stratosphere demonstrated that Gaviota does not have the "social, economic, or cultural indicia to qualify it as a community for allotment purposes."<sup>1</sup> Petitioner attempted to show that Gaviota qualifies as a

<sup>1</sup> See, e.g., Oak Grove, FL, 5 FCC Rcd 3774, 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315, 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685, 2685 (1990).

0 14

community based on its appearance on maps, a previous post office and the existence of a volunteer fire department, a school, and some businesses. Petitioner's showing is inadequate.

First, Petitioner reiterates that Gaviota is indicated on local and national maps. However, as Stratosphere stated in its comments, a locality's mere existence is insufficient to qualify it as a community.<sup>2</sup> Petitioner recognizes that Gaviota has a quite small population of approximately 70.<sup>3</sup> In fact, Gaviota's population is dominated by a single, private housing development, Hollister Ranch. Hollister Ranch's Internet web site markets the development as a "private, gated community."<sup>4</sup> Santa Barbara County zoning provisions, rather than any local zoning provisions, govern the Hollister Ranch. The residents of Hollister Ranch acknowledge that they shop and obtain basic services from nearby towns such as Santa Barbara, Goleta, Buellton, Solvang and Santa Ynez.<sup>5</sup>

Second, although the Gaviota area may have had a post office 12 years ago, there is no current post office there. Petitioner does not present any evidence of an effort or need to rebuild this post office. Whatever Gaviota might have been 12 years ago, the absence of a post office for the past 12 years supports the finding that Gaviota is not a community for allotment purposes.<sup>6</sup>

---

<sup>2</sup> Stratosphere's Comments at 2; see Crestview and Westbay, FL, 7 FCC Rcd 3059, 3059 (1992).

<sup>3</sup> Petitioner refers to the *2000 Rand McNally Commercial Atlas and Marketing Guide* which states that Gaviota has 70 residents. Petitioner also references the California Public Utilities Commission ("CPUC") estimate that Gaviota has a population of 200. Petitioner's Comments at 3. Additionally, in Exhibit 6B to Petitioner's Comments, a petition to the CPUC from Hollister Ranch Residents states that Gaviota has 100 full-time residents. Therefore, although Gaviota's exact population is unknown, it is very small by any account.

<sup>4</sup> Petitioner's Comments at Exh. 2.

<sup>5</sup> Id. at Exhs. 6B.

<sup>6</sup> See Grants and Peralta, New Mexico, DA 99-2841 (MMB December 17, 1999) at para. 8 (indicating that the lack of a post office contributes to a finding that an area is not a community for allotment purposes).

Third, Petitioner does not provide evidence of any organizations, such as a Chamber of Commerce or Lions Club, to indicate there is some “connection [ ] between political, social and commercial organizations and the community in question.”<sup>7</sup> Instead, Petitioner relies on Hollister Ranch’s volunteer fire department to bolster its claim of community status. However, Petitioner fails to show that this volunteer fire department has any connection to Gaviota as opposed to the private Hollister Ranch. While Hollister Ranch advertises the existence of the fire department, it does so only in connection with the development. There is no association with Gaviota. Therefore, this evidence fails to support Petitioner’s claim that Gaviota is a community.<sup>8</sup>

Fourth, Petitioner points to the fact that “Gaviota has its own school, the Vista De Las Cruces School, that provides classes for grades kindergarten through eighth grade.”<sup>9</sup> Petitioner also states that the Vista Volunteer parent organization helps organize social events for Gaviota residents. However, the school does not serve specifically Gaviota students. As Stratosphere stated in its comments, the Vista De Las Cruces School serves the entire Vista Del Mar Union School District, an area much larger than just Gaviota. Therefore, the Vista Volunteer parent organization is not tied to Gaviota but rather the larger school district. Thus, neither the school nor its parent organization supports Gaviota’s status as a community.<sup>10</sup>

---

<sup>7</sup> Crestview and Westbay, FL, 7 FCC Rcd at 3059.

<sup>8</sup> See id. (finding that the locality is not a community for allotment purposes where the locality does not contain businesses or organizations which identify themselves with the locality); Graham, WA, 7 FCC Rcd 1676, 1676 (1992) (finding same).

<sup>9</sup> Petitioner’s Comments at 4.

<sup>10</sup> See supra note 8.

Fifth, Exhibit 4 to Petitioner's Comments is a list of 15 "businesses" allegedly located in Gaviota. Attached hereto is the Declaration of DeWayne Holmdahl, a former member of the Santa Barbara County Board of Supervisors in whose district Gaviota is located, in which he describes the characteristics of these businesses. American Speedy Printing, David Motors, Fairview Pet Clinic, Haircrafters, Jaspers Saloon, Jewells Cabinets, Santa Cruz Markets Incorporated Santa Cruz Market Goleta and Wilson Waterproofing & Painting are all located in Goleta, not Gaviota.<sup>11</sup> (According to the Rand McNally Road Atlas, Goleta is 23 road miles from Gaviota.) Fastpacketnet Net is currently located in Buellton.<sup>12</sup> The Vista Del Mar Union School District and Hollister Ranch Owners Association Gate House are not commercial business establishments and are not related to Gaviota directly. Of the remaining five businesses, not one is a listing for a grocery, drug, or clothing store, stores that generally provide the necessities of a community.

The possible existence of a few businesses in Gaviota cannot support a finding of community status. Exhibits 6A and 6B to Petitioner's Comments show that Gaviota residents must travel to nearby towns such as Santa Barbara, Goleta or Buellton for basic local services.<sup>13</sup> Hollister Ranch's Internet web site advertises that the nearest shopping destination is in

---

<sup>11</sup> See Holmdahl Declaration at 1. American Speedy Printing is also no longer in business.

<sup>12</sup> See id.

<sup>13</sup> See Petitioner's Comments at Exhs. 6A, 6B (Gaviota area residents use Santa Barbara for "necessary services, such as doctors, hospital services, and schools, which are *not* available to them in their current free calling area") (emphasis added).

Buellton.<sup>14</sup> Thus, the Gaviota area depends economically on these other nearby towns and does not itself have sufficient economic indicia to qualify as a community.<sup>15</sup>

In fact, residents in the Gaviota area depend on surrounding towns in Santa Barbara County for their survival. As Stratosphere has demonstrated, Gaviota does not have its own post office, public library, municipal services, hospital, local government or elected officials.<sup>16</sup> Although a Santa Barbara County firehouse is located in Gaviota, Santa Barbara County maintains the firehouse and provides most services to the Gaviota area.<sup>17</sup> The California Public Utilities Commission recognizes this and now requires that calls from Gaviota to Santa Barbara not incur long distance toll charges.<sup>18</sup>

Finally, Petitioner points to the CPUC proceeding in which approximately 100 Gaviota residents petitioned for toll-free local telephone service to locations within the Santa Barbara exchange, as evidence that Gaviota residents view themselves as a community.<sup>19</sup> Hollister

---

<sup>14</sup> See id. at Exh. 2.

<sup>15</sup> See, e.g., Petersburg, New Jersey, 4 FCC Rcd 1719 (1989), where the Commission found that the petitioner's information "leads us to believe that Petersburg may be only an area within the community of Upper Township where some of the community's services and businesses are physically located." Id. Because the petitioner's information was insufficient to find that Petersburg was a community for allotment purposes, the Commission required additional social, economic, governmental or cultural indicia to find that it is a community for allotment purposes. Id.

<sup>16</sup> See Stratosphere Comments at 3.

<sup>17</sup> See id.

<sup>18</sup> See Petitioner's Comments at Exh. 6A.


<sup>19</sup> See id. at 4-5.

Ranch residents, however, comprised the vast majority of complainants and, as noted, the Ranch's physical location in the Gaviota area does not transform Gaviota into a community.<sup>20</sup>

Wherefore, for the foregoing reasons, Stratosphere respectfully requests that the Commission deny Petitioner's request to amend the Table of Allotments and that it terminate this proceeding.

Respectfully submitted,

STRATOSPHERE BROADCASTING  
LIMITED PARTNERSHIP

By:   
Howard M. Liberman  
Mark Van Bergh  
Gerie A. Miller  
ARTER & HADDEN LLP  
1801 K Street, N.W., Suite 400K  
Washington, D.C. 20006-1301  
(202) 775-7100

Its Attorneys

February 15, 2000

---

<sup>20</sup> See id. at Exh. 6B.

## DECLARATION OF DEWAYNE HOLMDAHL

I, DeWayne Holmdahl, hereby declare as follows:

In 1945, I moved to Nojoqui, California, located four miles from Gaviota. I resided there until 1950 and then moved to Lompoc, ten miles from Nojoqui. From 1981 to 1989, I served on the Santa Barbara County Board of Supervisors. My District included Gaviota and the Hollister Ranch. During my service on the Board I went through Gaviota three days a week. After I left the Board of Supervisors in 1989, I started a land use business in Santa Barbara. Because of the location of my business, I have driven through Gaviota approximately one to two times per month for the past ten years. In 1997, I was elected to the Lompoc City Council. As a council member, I have the occasion to drive through Gaviota once a month to attend meetings in Santa Barbara. I most recently visited Gaviota on February 11, 2000.

Based on my knowledge of Gaviota and the surrounding area, set forth below is information about the businesses that Petitioner referenced in his Comments:

1. American Speedy Printing, David Motors, Fairview Pet Clinic, Haircrafters, Jaspers Saloon, Jewells Cabinets, Santa Cruz Markets Santa Cruz Markets Goleta, and Wilson Waterproofing & Painting are all located in Goleta, not Gaviota.
2. American Speedy Printing is no longer in business.
3. Fastpacketnet Net is currently located in Buellton

I declare under penalty of perjury that the foregoing facts are true and correct to my personal knowledge. Executed on the 14 day of February 2000.

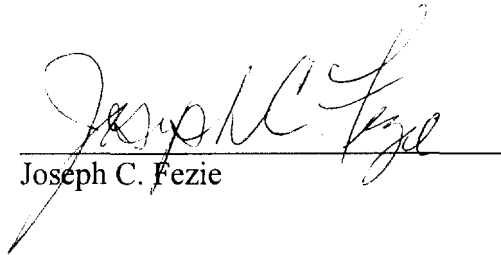
  
DeWayne Holmdahl

**CERTIFICATE OF SERVICE**

I, Joseph C. Fezie, do hereby certify that on the 15th day of February, 2000, a copy of the foregoing Reply Comments of Stratosphere Broadcasting Limited Partnership was served on the following parties by first-class United States mail, postage prepaid.

Brian Costello  
15275 Old Cazadero Road  
Guerneville, CA 95446

Harold K. McCombs, Jr.  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

  
\_\_\_\_\_  
Joseph C. Fezie